The 6th December, 1984

No. 9/5/84-6Lab/8543.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workmen and the management of M/s. Kumar Iron and Steel Works. Industrial Area, Sonepat.

BEFORE SHRI B. P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 161 of 1982

Between

SHRI PREM PAL SINGH WORKMAN AND THE MANAGEMENT OF M/S. KUMAR IRON AND STEEL WORKS, INDUSTRIAL AREA, SONEPAT.

Present—

Shri R.S. Lakra, A. R. for the workman.
Shri Surinder Kaushal A. R., for the management.

AWARD

1 In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between the workman Shri Prem Pal Singh and the management of M/s. Kumar Iron and Steel Works, Industrial Area, Sonepat, to this Court, for adjudication, —*vide* Labour Department Gazette Notification No. ID/SPT/23/82/36530, dated 6th August, 1982 :—

"Whether the termination of service of Shri Prem Pal Singh was Justified and in order ? If not, to what relief is he entitled ?"

2. On receipt of the order of reference, usual notices were issued to the parties. The parties appeared. The workman alleged that he was employed as Tongman with the respondent for the last 1½ years on monthly wages of Rs. 425 and that the respondent unlawfully terminated his services w.e.f. 10th January, 1982 in flagrant disregard of the provisions of section 25-F of the Industrial Disputes Act, 1947.

3. In the reply filed by the respondent, preliminary pleas projected were that initially request for making a reference to the Labour Court was rejected by the Government of Haryana, —*vide* its order dated 27th April, 1982 and when the reference was made again no notice was issued to the management and as such the reference is bad in law. On merits, it is alleged that the workman was employed on 14th December, 1981 who worked upto 10th January, 1982 and thereafter voluntarily abandoned his employment.

4. On the pleadings of the parties, the following issues were settled for decision on 20th January, 1983:

Whether the termination of service of Shri Prem Pal Singh was justified and in order ? If not, to what relief is he entitled ?

5. The management examined Shri Radha Raman Agrawal MW-1 and the workman besides own testimony examined WW-1 Shri Prem Pal Singh.

6. I have heard the learned Authorised Representatives of the parties. My findings on the issue framed are as below :—

7. The statement made by the workman is in consonance with the allegations made in the demand notice and the claim statement filed in the Court. His case is that he was employed 1½ years prior to the demand notice. The demand notice was raised on 19th January, 1982. That would mean that the workman was employed by the respondent some where in the month of June 1980. The management has placed on record an extract of the attendance register evidencing that the workman was employed on 14th December, 1981 but he absented himself w.e.f 11th January, 1982. The learned Authorised Representative of the workman relied upon admission of MW-1 Shri Radha Raman Agrawal, who stated that the workman remained absent from 10th April, 1981 to 30th April, 1981 and thereafter he joined his employer on 14th December, 1981. On this fact he has not been cross examined by the workman. It seems that after prolonged absence the workman again joined with the respondent on 14th December, 1981 and worked up to 10th January, 1982 Had the workman been in service from the month of April 1981 to December, 1981, the workman would have insisted upon the management to produce the attendance register to show that he was in the employment of the respondent during this period. But no such effort was made by the workman. This break in service from the month of April 1981 to December, 1981 is too long to be ingnored. So, from the date, services of the workman were dispensed with i.e. 11th January, 1982 the workman had worked with the respondent for less than one month and as such he can not avail of the benefits enshrined under section 25-F of the Industrial Disputes Act, 1947. So this issue goes against the workman.

8. In the light of my fore-going discussion, I find that the workman remained employed with the respondent only for a short period of less than one month and as such he can not avail of the provisions of section 25-F of the Industrial Disputes Act, 1947 and so this reference is answered and returned accordingly. There is no order as to cost.

B.P. JINDAL,

The 13th November, 1984.

Presiding Officer,
Labour Court, Rohtak,
Camp Court, Sonepat.

Endst. No. 161/82/3643, dated the 22nd November, 1984.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departmensts Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,

Presiding Officer,
Labour Court, Rohtak,
Camp Court, Sonepat.

No. 9/5/84-6Lab/8544.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workmen and the management of The Haryana Dairy Development Co-operative Federation Ltd., Gohana Road, Milk Plant, Rohtak .

BEFORE SHRI B.P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 72 of 1982

Between

SHRI HANS RAJ, WORKMAN AND THE MANAGEMENT OF THE HARYANA DAIRY DEVELOPMENT CO-OPERATIVE FEDERATION LTD., GOHANA ROAD, MILK PLANT ROHTAK.

Present—

Shri N.S. Vats, A.R. for the Workman.

Shri K.L. Nagpal, A.R. for the respondent.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana, referred the following dispute, between the workman Shri Hans Raj, and the management of The Haryana Development Co-operative Federation Ltd., Gohana Road, Milk Plant, Rohtak, to this Court, for adjudication,—*vide* Labour Department Gazette Notification No. ID/RTK/100/81/20061, dated 29th April, 1982 :—

"Whether the termination of service of Shri Hans Raj was justified and in order ? If not, to what relief is he entitled ?"

2. On receipt of the order of reference, usual notices were issued to the parties. The parties appeared. The workman alleged that he was employed with the respondent since 11th August, 1978 but his services were terminated unlawfully on 1st May, 1981 in flagrant disregard of section 25-F of the Industrial Disputes Act, 1947.

3. In the detailed reply filed by the management, the claim of the workman has been controverted in toto. It is pleaded that the workman had actually worked for less than 240 days with the respondent during the last 12 calendar months as laid down in section 25.B of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). Before the date of termination i.e. 1st May, 1981, it is alleged that the workman actually worked for only 224 days with the respondent and as such the provisions of section 25-F of the Industrial Disputes Act, 1947 was not attracted in this case. *Inter alia*, it is pleaded that in calculating the actual working days, the period for which, the workman remained on strike, should be excluded. That period is from 18th October, 1980 to 18th January, 1981. In this context, it is alleged that the strike resorted to by the work-force of the respondent was absolutely illegal, because its union leaders were engaged in negotiating some demands of the workmen with the Managing Director of the respondent but inspite of that without waiting for the outcome of the negotiations, the workmen resorted to strike, though the management displayed a notice on 18th October, 1980 asking the workman to

resume their duties, failing which, their services will be terminated. But the response of the workmen was not responsible and as such his services were terminated on 4th November, 1980 but inspite of that, the management allowed the workman to resume his duties on 19th January, 1981 and the workman was ordered to be treated on *denovo* appointment and he was not paid wages for the period of strike. On the basis of these allegations, it is alleged that if the period of strike is excluded, the workman had not actually worked for 240 days with the respondent in the last 12 calendar months and as such he cannot avail of the benefits of the provisions of section 25-F of the said Act.

4. In the replication, filed by the workman, he has controverted the various pleas taken by the respondent.

5. On the pleadings of the parties, the following issue was framed for decision on 17th January, 1983—

(1) Whether the termination of services of the workman is justified and in order ? If not, to what relief is he entitled ?

6. The management examined 4 witnesses. MW-1 is Shri Krishan Lal, MW-2 Shri R.P. Chillar, MW-3 Shri Kalam Singh, despatch clerk and MW-4 is Shri R.K. Chabbra, General Manager of the respondent. On the other hand, the workman examined himself as WW-1.

7. I have heard Shri S. N. Vats; learned Authorised Representative of the workman and Shri K. L. Nagpal, legal adviser of the respondent. My findings on the issue framed are as below:—

Issue No. 1

8. The learned Authorised Representative for the workman Shri S. N. Vats vehemently contended that termination of service of the workman was "retrenchment" within the meaning of that expression as given in section 2(00) of the said Act, since he did not fall in any of the 3 excepted cases mentioned in the said section and since there was "retrenchment" it was bad for non compliance with the provisions of section 25-F of the said Act. On the other hand, the learned legal adviser of the respondent contended that since the workman had not actually work for 240 days during the last 12 calendar months with the respondent, as is evident, from the duty chart EX.MW 1/1 duly proved by Shri Krishan Lal, Time Keeper MW-1, the workman cannot bank upon the provisions of section 25-F of the said Act. It is common case of the parties that there was strike in the respondent plant for the period 18-10-80 to 18-1-81. It is also not disputed by the workman that the entire labour force of the respondent was on strike during this period It is also undisputed that wages for this period were not paid to the workman, probably they were not claimed by him. So, the learned legal adviser for the respondent contended that if the strike period is excluded while computing the number of working days, the workman has definitely worked for less than 240 days during the last 12 calendar months. If this period is included, then the workman has definitely put in more than 240 days of work with the respondent. In this very context he contended that the case of the workman falls under section 25 B (2) of the said Act and not under section 25-B. (1) as argued by the learned Authorised Representative for the workman. Section 25 B. (1) and 25. B(2) can be reproduced hereunder for ready reference:—

25 B. for the purposes of this Chapter:—

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) Where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer;

(a) for a period of one year, if the workman during a period of twelve calendar months preceding date with reference to which calculation is to be made, has actually worked under the employer for not less than—

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

(b) for a period of six months, if the workman, during a period of six calendar months preeceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than

(i) ninety-five days, in the case of a workman employed below ground in a mine; and

(ii) one hundred and twenty days, in any other case.

Explanation:—For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which—

(i) he has been laid off under an agreement or as permitted by standing orders made under the Industrial employment (Standing Orders) Act, 1946 or under this Act or under any other law applicable to the industrial establishment;

(ii) he has been on leave with full wages, earned in the previous years;

(iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and

(iv) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks.

9. Shri Nagpal authorised Representative for the respondent pressed ino service many grounds in support of his contention that the strike resorted to by the workman was illegal and unjustified. He made a pointed reference to the Managing Director's letters dated 30-9-80 and 1-10-80 Ex. MW-2/1 and Ex. MW-2/3 inviting representatives of the workers union for negotiation and also requesting the workmen not to resort to strike and further that no attempt was made by the workman to refer the dispute to the Labour-cum-Conciliation Officer as required under section 12 of the said Act and also that there is no evidence on record to show that the workman ever approached the Government of Haryana for referring their grievances as an Industrial dispute to the Industrial Tribunal as envisaged under section 10 of the said Act. It is further contended that since the workmen did not claim his wages for the strike period, so, there is no escape from the conclusion that the workman accepted the strike period as absence from duty and further more no demand of the workman was conceded by the management after the workman had resumed his duty after strike period. On the basis of the points discussed above Shri K. L.Nagpal contended that the strike resorted to by the work-force of the respondent including the workman was illegal and unjustified and as such the period of strike should be excluded for computing the number of working days, the agg rieved workman actually worked with the respondent during the last 12 calendar months. In that behalf Shri Nagpal referred to **1979 Lab. I. C. 1079 Punjab and Haryana and** AIR **1960 S. C. 902**. The observations made in this authority are on peripheral points and are not exactly applicable to the controversy in hand. Firstly the strike resorted to by the work-force for the respondent was not declared illegal by the Government of Haryana So, assuming that the strike was illegal, even than participation in an illegal strike may not necessarily and in every case be punished with dismissal without proper enquiry being held. I am fortified in making these observations from the law laid down in **AIR 1961 S.C. 1158, Bata Shoe Co. (P) Ltd.** *v/s*. **D.N. Gunguli and others**. Another authority which can be referred with advantages was reported in **AIR 1960 S.C. 219 India General Navigation and Railway Co. Ltd. and another** *v/s*. **their workmen**. In this authority their Lordships of the Hon'ble Supreme Court observed that assuming it is open to the management to dismiss a workman who has taken part in an illegal strike, in determining the question of punishment, a clear distinction has to be drawn between those workmen, who not only joined in such strike, but also took part in obstructing the loyal workmen for carrying on their work or took part in violent demonstration.. In the paresent case there is not an iota of evidence on record that the aggrieved workman resorted to any violance during the strike period or he in any way obstructed any loyal workman from carrying on his work. The punishment of dismissal can be meeted out after proper enquiry by the management, in case, the strike had been declared illegal. In the present case the strike resorted to by the work-force of the respondent was not declared illegal by the Government of Haryana, so various contentions raised on behalf of the respondent are absolutely unfounded. Since the controversy in hand is being decided primarily on accepted facts, so I need not discuss the oral evidence adduced by the parties. So, I find that the aggrieved workman had put in more than 240 days actual work with the respondent on the date his services were terminated and as such his termination was in gross violation of the provisions of section 25-F of the Industrial Disputes Act, 1947, because no notice or retrenchment compensation was given to him. So, the order of termination of the workman is held to be illegal and void *abinitio*. The law is settled that removal or order of terminating the services of the workman must necessarily lead to reinstatament, as if the order has never been and so it must ordinarily lead to back wages to. But there may be exceptional circumstances which made it impossible or wholly inequitable vis-a-vis the employer and the workman to direct reinstatement with full back wages. It is a common knowledge that the Milk plants in Haryana are always in the red and reasons for the same may be many. All the Milk Plants in Haryana are in financial doldrums and as such it wil not be equitable to award full back wages to the workman. Such a prayer was also made by the Legal Adviser of the respondent during the course of arguments. So, taking into consideration the totality of circumstances, I order for the reinstatement of the workman with continuity of service and 25 percentage back wages. The reference is answered and returned accordingly. There is no order as to cost.

Dated 7th November, 1984.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak.

Endst. No. 72/82/3632, dated 22nd November, 1984.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour & Employment Departments' Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak.